

BLACK MONDAY

Newsletter

Citizen Action Against theft of our money without SHAME!

EDITORIAL

Access to Justice is a common phrase today. And yet, in Uganda legal aid service providers and lawyers giving free legal representation as part of their pro bono work face an uphill task to support citizens to get justice. The Judicial Service Commission (JSC) is a constitutional institution whose mandate relates to managing appointments and quality of the Courts. It recently made a report indicating a number of shocking malpractices within the Judiciary that included misappropriation of bail money, sexual harassment and illicit sex with staff, absenteeism and lateness in court, improper denial of the right to be heard to some parties in cases (ex parte hearings), all of which undermine delivery of justice and are betrayal of the public trust in judicial officers.

We salute the JSC for its courageous exposure of abuses by judicial officers and for puncturing the conspiracy of silence that allows corruption to continue. The citizens most affected are vulnerable women, children and men. Indeed even within the Judiciary the JSC report shows a gender dimension to the injustices within the system as it is women staff primarily suffering sexual harassment. The justice system itself is a victim - many poor Ugandans believe justice is only for the powerful. As citizens lose trust in government institutions to resolve disputes fairly they turn to mob justice: it is not the law but power that determines outcome of cases, which leads to further violation of human rights.

The systemic weaknesses in the courts, police, and other law enforcement institutions can only be stopped by citizens taking a stand to break the cycle of corruption, demand accountability and shun political patronage. Interference in judicial independence and politicisation of law enforcement by the Executive has led to infiltration of these agencies with unprofessional, untrained 'cadre' staff often in leadership while professional, independent officers careers stagnate. The years-long saga surrounding appointment of a new Chief Justice shows the root of the problem. Human rights actors and legal sector civic organizations claiming to work for access to justice and rule of law need to provide leadership to challenge the rot affecting the third arm of government, the Judiciary, and demand that the Executive respect and enforce good governance in line with its constitutional duty.

— Irene Ovonji-Odida,
CEO FIDA Uganda

Inside this issue >>

- 2 | Marriage & Divorce Bill Thrown Out: Lessons in democracy
- 3 | Activism is not a crime, but a legitimate political process
- 8 | The corruption scandals

Corruption plague in the Judiciary



FALLING APART: A journalist points at a collapsing ceiling of the Court of Appeal Registry at Twed Towers in Kampala, last year. On the same day, high court judge Justice Benjamin Kabiito narrowly survived being hit by a collapsing ceiling in his chambers on the same floor of the building. Twed Towers also houses the Constitutional Court.

There is increasing evidence of the infiltration of corruption into all branches of Government charged with the safeguarding of the rule of law. Particularly insidious in this regard is judicial corruption.

Judicial corruption may be defined as acts or omissions that constitute the use of public authority for the private benefit of judges, court personnel, and other justice sector personnel that result in the improper and unfair delivery of judicial decisions.

The judiciary is in theory considered the custodian of justice, the bastion of hope when everything else goes wrong. But when the judiciary turns into a den of rouses and a market place of justice, where justice is sold to the highest bidder, then we are all doomed.

In June 2014, a report released by Anti-Corruption Coalition Uganda (ACCU), dubbed 'Temples of Injustice,' highlights common corruption incidences that mainly include impunity and conspiracy between magistrates, court clerks, state prosecutors, police, and prison warders, especially in rural areas. According to the report findings that targeted 15 courts with a diverse geo-

graphical reach of Uganda's five regions, the key drivers of corruption range from poor time keeping, to formalised corruption, non-cash bail turns into cash bail, bail refund lost, and cheating of suspects.

What drives these men and women of 'honor' in such shameful practice? A senior court officer in one of the courts in the Karamoja region suggested in the ACCU report that, "the conditions of work up country are simply so hard that we at times cannot help but do unprofessional things as a survival reflex action."

There are no excuses for selling Ugandans short on justice. Although the senior echelons of the judiciary wax lyrical about their intolerance to corruption in the judiciary, officials accused of the vice are merely transferred from one court to another, not interdicted pending disciplinary process.

Back at the center, the ugly head of corruption continues to raise its head. While appearing before PAC, Judiciary failed to account for 63 billion. In 2010/11, the Supreme Court was found to have budgeted for 64 criminal appeals. Of these, only 14 were

heard and over 50 appeals were shelved yet funds were released. Behind these statistics are human beings who are contesting their guilt. Judiciary is reported to have further failed to account for millions of shillings released for training of Judicial Officers and purchasing of 15 vehicles for new Judges.

This pattern of corruption extends to the contracts signed with service providers to handle construction works across judiciary facilities. Shoddy work is commonplace. Either the structures are too small compared to the planned designs or very poor work is done. In Kabale, a plan to dig 15 feet pit latrine was corruptly reduced to a shocking 5 feet. The latrine was full in a month. This goes to tell the nature of work contractors are doing.

The Uganda Law Society also petitioned Parliament calling for the appointment of a Commission of Inquiry into the failures and malaise in the Judiciary and the legal Profession. The petitioners pointed to allegations of corruption and unethical conduct by Judicial Officers and other members of the bar.

TURN TO PAGE 2

NOT FOR SALE

Corruption plague in the Judiciary

FROM PAGE 1

“There is evidence of inefficiency, incompetence and corruption in the Judiciary and unethical conduct by members of the bar,” noted retired Supreme Court Judge, Justice George Kanyeihamba while delivering the petition to the Speaker of Parliament Rt.Hon. Kadaga.

It is absurd that corruption in Uganda’s judiciary has reached pandemic proportions. The maxim “why pay a lawyer when you can buy a judge” has not only achieved notoriety but is also an anecdotal account which provides just a glimpse of the scourge of corruption that has spread across the judicial system of Uganda. Clerks and support staff operate their own rackets through which ‘If you want the favour of a judge, you must offer a figure commensurate to his/her stature.’

The judicial corruption comes in the form of delay in the execution of court orders; unjustifiable issuance of summons and granting of bails; prisoners not being brought to court; lack of public access to records of court proceedings; disappearance of files; unusual variations in sentencing; delays in delivery of judgements; high acquittal rates; high rates of decisions in favour of the executive; appointments perceived as resulting from political patronage; and postretirement placements. The situation frustrates the poor who do not get justice from the courts.

A corrupt judiciary means that the legal and institutional mechanisms designed to curb corruption are handicapped. The judiciary is the public institution that is mandated to provide essential checks on other public institutions. Therefore, a fair and ef-

ficient judiciary is the key to anti-corruption initiatives.

There must be a societal awakening to the deleterious effects corruption has on the economic and political growth of our country. In this regard, public leaders who are reform-minded must lead public campaigns exhorting anti-corruption reforms. It will do us a lot of good to purge the Judiciary of corruption and create systems that can support meritorious demand for justice based on the merit of a case. As we call on the public to be aware of their rights in their quest for justice and avoid being timid, we need institutions that will not play ping pong with such corrupt officers when the facts have been laid bare.

— izawedde@accu.or.ug
 — mksmas@yahoo.co.uk

ACCESS TO JUSTICE/ LEGAL AID IS IT A STATE OBLIGATION?

Legal aid is a human right and the state has to ensure that it is respected, protected, and promoted. It is also an obligation of the state to provide legal aid to the most vulnerable, indigent and those who are unable to afford the services of a private advocate. “The cost of legal aid is estimated to be 20 billion shillings per year,” says Hon. Otafire, Minister of Justice and Constitutional Affairs. However, this not what is allocated to them, leaving the burden to Civil Society Organizations – The Observer, Friday, 11th July 2014, pg 24.

— LASPNET

MARRIAGE AND DIVORCE BILL THROWN OUT: Lessons in democracy (or not)

So the ‘controversial’ Marriage and Divorce Bill was thrown out by the NRM caucus that met on 8th April 2013. I am sure many people were happy, throwing parties even, at the news of the demise. But beyond the noise and chest thumping at ‘defeating’ the bill, I think we should take a deeper look at the manner in which the bill was handled and what it says about Uganda as a ‘democracy’ and the way tax payers’ funds have been misused in faulted legal processes.

Uganda has a Constitution and is signatory to various human rights instruments that bind it to ensuring that laws are reformed to reflect and uphold the rights enshrined in these instruments. These instruments contain clear provisions that uphold equality between men and women that abhor discrimination on the basis of gender in the family setting. By rejecting the bill, the Government, through the caucus, was saying that we will not be a country that respects the Constitution or constitutionalism. It is quite interesting to note that when term limits were removed, MPs of the ruling party were given 5 million shillings each to support their removal. And once again, we see the giving of 5 million shillings for yet another abrogation of the Constitution. In other words tax payers incurred a cost of UGX. 1,925,000,000 distributed to 385 MPs to undertake consultation on a bill without a clear framework to determine what they were consulting on and how.

There was no clear agreement as to how many people and of

what calibre, each MP should consult. The MPs went prepared to return a no vote for the bill. In my view that was not a fair exercise so the results cannot be valid. It was



ANOTHER ABROGATION OF THE CONSTITUTION

A tax payer incurred a cost of UGX. 1,925,000,000 distributed to 385 MPs to undertake consultation on a bill without a clear framework determine what they were consulting on and how.



clear that even as MPs were sent on recess, they already wanted to throw out the bill, so they went out looking to validate that result. They went out not to consult on the bill, but to mobilize more insults against it. To make matters worse, there is the issue of rule by caucus: we have seen the ruling party caucus become the burial ground for bills or proposals that the head of state and head of the party does not want to see through - from the various corruption reports, to proposals for increasing the health budget, to various bills, including the famous clause 9 of the Oil Bill. Since many MPs peg their political survival on the President, they will not want to be seen go against what he says.

These funds used in this flawed exercise could have instead been used to support many domestic violence cases faced in this country on a daily basis. So many women lack legal aid services and are denied access to justice due to the high costs required to hire lawyers. The funds could also have been useful for the set up several local courts to provide family arbitration to those faced with gender based violence. And so, while many people will celebrate and ululate because the bill has been defeated, I think it’s our democracy that has been on trial throughout this process and I think we have failed miserably on that front. We need a stronger commitment to true democracy in this country. It is not yet uhuru!

— jackie.asiimwe@gmail.com

WHY I CAN'T RUN AND HIDE...

If I run and hide I will have betrayed my friend A. She lives in Entebbe. She has cohabited for almost 20 years. She has tried to persuade the man she calls her husband to marry her in church, but he won't hear of it, or her dilly dallies. She has invested her all in the relationship, but she knows it is not a stable one. For her I must go on.

If I run and hide, I will have betrayed G, a young gentleman I met. He ran away from Karamoja, from his wife, who he was forced to marry when he was 16. His parents did not listen to his plea, that all he wanted to do was study. He did what was expected of him by his culture, and then he fled for his life, leaving a young child and wife. For him I must go on.

If I run and hide, I will have betrayed S, a young friend, who fresh from a C-Section, was taken back to hospital after a few days, with torn stitches, because her husband could not wait a few more weeks for her to heal. She was his and she had to give in. After all, she had said her vows. For her, I must go on.

If I run and hide, I will have betrayed P, a young, beautiful lady, a client of mine, who came with a broken arm. Her husband broke her arm, she was scared of him. He had stopped her from working. Every day he locked their bedroom door and locked their gate, so she would not leave the house. This one day he forgot to lock the gate and she escaped to come to FIDA. I asked for a car to take her back to her house, before her husband came back. To this day, I wonder if P is alive. I don't know. But for her, I must go on.

If I run and hide, I will have betrayed M, an elderly woman, who lives in Ntungamo, whom I met last year. She and her husband got married in church in 1968. Their marriage went sour in 2004, when the man took on a second wife. Her husband sought to dispossess her, but her daughters stood by her side. Yes, they forced their dad to give their mom land, but every time M grows some food, the man sends his cows into her garden to eat her food. For her, I must go on.

If I run and hide, I will have betrayed one other client who we fought hard for. Her marriage of 30 years went sour and her husband wanted his bride price back. Her parents were too old and too poor to pay it back, so the man organized for the removal of his parents in laws, iron sheets, so that he could sell them and get back part of his dowry. For her I must go on.

If I run and hide, I will have betrayed D, a caller on one of the radio stations where I am talk show panelist. She was in distress. For the ten years she has been married, she and her husband had worked hand in hand together to build whatever little fortune they had. She gave of her money, as did he, and together they bought some property. She trusted him to take care of the paper work. And now, when the marriage has turned sour, she recently found out that he had registered all their property in his mother's name. She is at a loss of what to do. For her, I must go on.

For these and many more, for my stories could fill endless pages, and I could go on for ages - for these, I must go on.

— jackie.asiimwe@gmail.com

Activism is not a crime

In his letter to fellow clergymen at the height of the civil rights movement in America in the 1960's, Dr Martin Luther King said: "You may well ask: Why activism? Why boycotts? Isn't negotiation a better path? Negotiation cannot happen in a situation where a government despises alternative views and considers civil society organizations as enemies. Activism is a legitimate continuation of political processes through means that seek to dramatize an issue so that it can no longer be ignored."

Thanks to the momentum of the Black Monday Movement which was launched on 12 November 2012, many Ugandans, especially the youth, have attained the courage to dramatize corruption issues so that they can no longer be ignored by fellow citizens and the government.

However, these activists are frequently berated by our leaders and shabbily treated by the police. Magistrates have made it a habit to deny activists bail by setting stringent conditions, contrary to Article 23 of the Constitution which requires that bail should not be excessive. Space for activism is becoming increasingly restricted not only through the imposition of legal restrictions and bureaucratic constraints, but also through the intimidation, defamation, arbitrary arrest, imprisonment, abduction, torture, and even assassination of civil society activists. To this, we may add burglary of activists' offices.



RESPONDING RAPIDLY TO THREATS OF LEGAL NATURE

The Black Monday Movement constituted alongside other legal aid service providers a rapid response legal aid scheme to assist victims of police brutality and other forms of state aggression so that their complaints can be expertly and efficiently managed on pro bono (voluntary) basis.

Yet activism is not a crime. This was confirmed by the Supreme Court of Uganda in the celebrated case of Charles Onyango Obbo and Andrew Mujuni Mwenda versus Attorney General (2004) when Justice Joseph Nyamihanda Mulenga (RIP) cautioned all persons placed in positions of leadership and responsibility to tolerate a certain degree of anger, annoyance or



RIGHTS ABUSE: An activist being manhandled by Police Officers in Lira after attending a court session where a fellow activist was being presented for participating in Black Monday activities. Police should learn to handle all persons with the highest level of dignity since activism is not a crime.



CIVIL RIGHTS: Dr Martin Luther King.

disturbance that may arise from nonviolent action directed at them by dissatisfied citizens, especially those in the media and political Opposition.

In the next 24 months of "2016" politicking, we anticipate that there shall be an unusually high number of complaints by activists against the police and other security organs. Besides the garden variety of trumped up "public order" charges (e.g. unlawful assembly, incitement to violence, common nuisance, etc), these complaints are likely to be of an increasingly novel

or complex nature, requiring specialist legal services and a lot of resources at one's disposal, such as applications for habeas corpus, variation of bail conditions, torture claims, malicious prosecution, wrongful arrest/detention, wrongful search/seizure, judicial review, constitutional petitions/references, private prosecution, disciplinary action against police officers, inquests, public inquiries, and even monumental trials based on politically motivated charges of terrorism, treason, "economic sabotage", "promoting homosexuality" and other "offences against the State".

In response, the Black Monday Movement constituted alongside other legal aid service providers has set up a rapid response legal aid scheme to assist victims of police brutality and other forms of state aggression so that their complaints can be expertly and efficiently managed on pro bono (voluntary) basis.

This is intended to guarantee the sustainability of the Black Monday Movement by responding rapidly, boldly and inexpensively to counter all threats, challenges and shortcomings of a legal nature that may be faced by anti-corruption activists without discrimination.

— For assistance, contact Andrew (0700627696) or Isaac (0757200204);
Email: legalbrainstrust@gmail.com

POEM

Seeking justice

Do I dare walk through the door?
Will I really find what I'm looking for?
I know court is for the livid
Does it also accept the timid?
So many things to contemplate
So many others to calculate
Will I be accepted?
Will my complaint be rejected?
Who will address my fears?
Who will wipe my tears?
Who will answer my questions?
Where do I go for suggestions?
Yes I want Justice
But I ask what the price is
For those I will humiliate
For those who will come to hate
Me.....
Maybe for now I will let it be
And find another way to nurse my misery
As I think again
About how to deal with my pain.

— jackie.asiimwe@gmail.com

